

THIS IS A TRANSFER TO AN INSTRUMENTALITY OF THE STATE OF NEW HAMPSHIRE AND IS EXEMPT FROM THE NEW HAMPSHIRE REAL PROPERTY TRANSFER TAX PURSUANT TO RSA 78-B:2, I. THIS TRANSFER IS ALSO EXEMPT FROM THE LCHIP SURCHARGE PURSUANT TO RSA 478:17-g, II(a).

**CONSERVATION EASEMENT DEED:  
Village Road, Surry**

This **DEED OF CONSERVATION EASEMENT** given as of the date set forth below, we **Kevin G. Bergeron**, of 12 Pray Street, Rochester New Hampshire 03868, **Linda C. Perry**, of 3145 Raintree Road, York, Pennsylvania 17404, **Carrie Lennon and Stacey Harrison** (Executors of the Estate of Clarence R. Bergeron), and **Theodore R. Bergeron**, of 2 Phoebe Court, Keene, New Hampshire 03431 (collectively, the “**Grantors**”) for consideration paid, grant to the **Town of Surry**, a New Hampshire a municipal corporation, duly organized and existing under the laws of the State of New Hampshire, with an address of 1 Village Road, Town of Surry, County of Cheshire, State of New Hampshire 03431 (“**Grantee**”), with **WARRANTY** covenants, the following:

a **CONSERVATION EASEMENT** (“**Easement**”) in perpetuity with respect to that certain area of land (herein referred to as the “**Property**”) with any and all structures, and improvements thereon, consisting of approximately fifteen (15) acres, situated in the Town of Surry, County of Cheshire, State of New Hampshire, as more particularly bounded and described in **Appendix A** attached hereto and made a part hereof.

**1. PURPOSES**

This Easement is granted pursuant to NH RSA 477:45-47 exclusively for the following Conservation Purposes (“**Purposes**”) for the public benefit:

- A. To protect farmland for the future and to preserve open space consistent with NH RSA 79-A:1;
- B. To protect surface and ground water, and to protect the aquifer under the Town of Surry and overlaying stratified drift;
- C. To protect the Property’s agricultural productivity and the long-term viability of the land for agriculture;
- D. To protect the rural character of the Town of Surry, consistent with the Surry Master Plan;
- E. To protect animal species and wildlife habitats, such as for turkey, geese, porcupines, deer, partridge, pheasants and others, consistent with the NH Fish and Game Department’s Wildlife Action Plan;

F. To protect the natural plant communities, consistent with the goals of the NH Natural Heritage Bureau;

G. To protect the scenic viewshed for the public, including Surry Mountain, in accordance with the Bergeron family wishes.

H. To protect the Property for limited, low-impact, non-commercial outdoor recreational use by the general public for such activities as hiking, wildlife observation and snowmobile use on marked trails; and

I. To reduce development pressure within the Town of Surry.

The above Purposes are consistent with the goals and objectives stated in the Surry Master Plan and are consistent with New Hampshire RSA 79-A:1 “Declaration of Public Interest,” which states: “It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state’s citizens, maintaining the character of the state’s landscape, and conserving the land, water, forest, agricultural and wildlife resources.”

All these Purposes are consistent and in accordance with the U.S. Internal Revenue Code, Section 170(h). Conservation of the Property in accordance with these Purposes will yield significant benefits to Surry residents, visitors, and the general public.

## **2. PROHIBITED USES** (Subject to the reserved rights specified in Section 3 “Reserved Rights” below.)

The Property shall be maintained in perpetuity as open space and any activities inconsistent with the above Purposes are prohibited, including, but not limited to the following:

### **A. Land Use Prohibition**

i. The Property shall be maintained in perpetuity as open space without there being conducted thereon any residential, industrial, or commercial activities except agriculture and other permitted uses as described in Section 3 “Reserved Rights”, and provided that the future capacity of the Property to produce agricultural crops shall not be degraded by on-site activities. Such on-site agricultural activities shall not cause significant soil erosion or significant pollution or degradation of surface waters, subsurface waters, or soil. The Property shall not be used for forestry, tree farming (other than Christmas tree farming), or sod farming.

ii. Any acts, uses or management activities undertaken on the Property shall not harm state or federally recognized rare, threatened, endangered species or other species of conservation concern, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Inventory or the agency then recognized by the State as having responsibility for identification and/or conservation of such species, nor to harm

state or federally recognized historical or archeological resources, such determination of harm to be made based upon information from the New Hampshire Division of Historic Resources or the agency then recognized by the State as having responsibility for identification and/or conservation of such resources.

iii. Any acts, uses or management activities undertaken on the Property shall not interfere with the Property's agricultural value and character or its historic, natural, recreational and scenic values.

iv. No defacement, movement, removal, or alteration of any stone walls or other monuments or markers that serve as legal boundaries, or as the boundary between the Property and non-easement area, shall be permitted. See New Hampshire RSA 472:6.

## **B. Subdivision**

i. The Property shall not be subdivided or separately conveyed in more than one parcel.

ii. Notwithstanding the foregoing, the following shall not be considered violations of this Easement: the granting of mortgages, life estates, or partial ownership interests among multiple persons or entities, so long as all such transactions relate to the entire Property and not to component portions thereof, and so long as no action is taken which violates the Purposes of this Easement. A lease of all or a portion of the Property for a use permitted hereby shall not be considered a violation of this Easement.

iii. Even if the Property consists of more than one parcel for real estate tax or any other purpose or if it may have been acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole.

iv. The Property shall in no way be used to satisfy the requirements of any applicable zoning ordinance or subdivision regulation, including but not limited to density, frontage, or open space requirements, with respect to the development of any other property.

## **C. Structures and Improvements**

i. No structure or improvement shall be constructed, placed, or introduced onto the Property, except for structures and improvements which are (1) necessary in the accomplishment of the on-site agricultural or non-commercial outdoor recreational uses of the Property, and (2) not detrimental to the Purposes of this Easement. Such structures and improvements are subject to the terms of Section 3 "Reserved Rights" and Section 4 "Approval Requirements."

ii. Notwithstanding the above, there shall not be constructed, placed, or introduced onto the Property any of the following or similar structures or improvements (unless provided for in Section 3 “Reserved Rights”):, dwelling, residence, mobile home, cabin, residential driveway, any portion of a septic system, tennis court, swimming pool, athletic field, golf course, aircraft landing area, cell tower, or any impervious surface. Prior authorization by the Grantee, or its designee, is needed for construction of wind turbines or solar panels.

#### **D. Surface Alteration**

There shall be no removal of rocks, gravel, minerals, sand, or topsoil, grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems or natural habitat of the Property, except as follows and subject to the approval requirements of Section 4:

i. Activities commonly necessary in the accomplishment of the agricultural, conservation, or non-commercial outdoor recreational uses of the Property, provided it is not detrimental to the Purposes of this Easement nor harmful to state or federally recognized rare, threatened, or endangered species, such determination of harm to be based upon information from the U.S. Fish and Wildlife Service, the New Hampshire Natural Heritage Bureau, the N.H. Nongame and Endangered Wildlife Program, or the agency then recognized by the U.S. Government or the State of New Hampshire as having responsibility for identification and/or conservation of such species.

ii. As required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee or its designee as being consistent with the Purposes of this Easement.

#### **E. Waste and Dumping**

There shall be no dumping, injection, burning, or burial of man-made materials or materials then known to be environmentally hazardous allowed on the Property, nor any dumping or storing of trash and waste. This restriction will not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of operational farm machinery, organic matter, agricultural products, or agricultural byproducts on the Property. Use of manure is allowed, but manure may only be stockpiled in winter.

#### **F. Granting of Easements for Utilities and Roads**

No rights-of-way or easements of ingress or egress in favor of any third party shall be created or developed into, under, over, or across the Property without prior written approval of Grantee, or its designee, except those of record as of the execution of this Easement and those specifically permitted in the provisions of this Easement. Grantors shall not sell, lease, grant, or modify easements for utilities and/or roads on any portion of the Property when the utility or road will adversely impact the agricultural use and future viability and related Purposes of this Easement as determined in advance by Grantee.

### **G. Abutters**

There shall be no activities on the Property which interfere with any abutter's quiet enjoyment of their property, such as excessive noise or light pollution, except as necessary for agricultural production conducted in a manner consistent with the Purposes of this Easement and restrictions herein.

### **H. Signage**

There shall be no signs, billboards, or outdoor advertising of any kind erected or displayed on the Property. Grantors or Grantee may, however, erect and maintain the following signs of reasonable size and appearance: (1) signs necessary for the permitted agricultural and recreational purposes permitted by this Easement, (2) signs prohibiting camping, use of motorized vehicles except snowmobiles, and damage to crops, (3) signs concerning public safety and restricting public access to trails, (4) temporary signs indicating that the Property is for sale or lease, and (5) signs for public education. Prior to posting any such sign, Grantors must receive prior written approval of the Grantee or its designee. Furthermore, Grantee may erect and maintain signs designating the Property as land under the protection of Grantee.

## **3. RESERVED RIGHTS**

All uses of the Property not expressly prohibited herein and not inconsistent with the Purposes of this Easement are expressly reserved to Grantors, including the following:

### **A. Agriculture**

Grantors reserve the right to engage in agriculture. The provisions of this Easement will not be interpreted to restrict the types of agricultural operations that can function on the Property, so long as the agricultural operations are consistent with the long-term viability of the Property and the Purposes of this Easement. Grantors shall follow all environmental laws and best agricultural practices published by professional organizations such as USDA, NH Department of Agriculture, UNH Extension, and Cheshire County Conservation District. For the purposes of this Easement, "Agriculture" includes floriculture, horticulture, and the breeding, boarding, training, raising, demonstrating, production, harvesting, processing, storing, or selling of plant crops or livestock substantially grown or raised on the Property, or products from said livestock. Grantors may also engage in Christmas tree farming.

Grantors may use agricultural vehicles and equipment in furtherance of the agricultural purposes permitted hereunder, provided that they are maintained and stored in a safe and neat manner.

“Agriculture” also includes:

- i. **Educational Activities** making direct use of or otherwise enhancing agricultural uses and/or activities on the Property, including but not limited to: agricultural classes, training sessions, demonstrations, and tours of agricultural operations; and
- ii. **Agritourism**, which is defined as attracting visitors to a farm to attend events and activities intended to promote agriculture, and which are accessory uses to the primary farm operation. Any non-conforming activity that is a component of such an activity shall be permitted only so long as it:
  - a. Incidental and minor relative to the overall agricultural event;
  - b. Is not detrimental to the Purposes of this Easement; and
  - c. Has been approved in advance and in writing by Grantee or its designee as subject to Section 4 “Approval Requirements”.

#### **B. Existing Structures**

Existing structures and improvements may be maintained, repaired, replaced, reasonably enlarged and are subject to the approval requirements of Section 4. Once Structures and Improvements are constructed they shall thereafter be considered “Existing Structures and Improvements”, and shall be governed by this Section 3.B.

#### **C. Building Envelope(s)**

There is no Building Envelope designated in this Easement. Therefore, no new structures or improvements shall be constructed, placed, or introduced onto the Property, with the exception of those allowed under Section 3.D, “Minor Structures and Improvements”.

#### **D. Minor Structures or Improvements**

- i. Grantors may construct, place, or introduce minor agricultural structures or improvements that may include, but not be limited to, greenhouses, fences and irrigation systems. Such structures and improvements are permitted only insofar that they are used for the accomplishment of the on-site agricultural, conservation, habitat management, or noncommercial outdoor recreational uses of the Property, are not detrimental to the Purposes of this Easement, and neither individually nor collectively have an adverse impact on the agricultural use and future viability and the Purposes of this Easement. Such structures and improvements are subject to the terms of Section 3 “Reserved Rights” and Section 4 “Approval Requirements.”
- ii. Any such construction that exceeds three hundred (300) square feet in ground area is subject to the approval requirements of Section 4.

#### **E. Public Access**

Grantors may limit public access to: only trails or specific areas that have been established at the Property for public access.

#### **F. Utilities and Well Construction**

Utilities to serve allowed structures and improvements, including on-farm energy structures to power the farm and agricultural structures that neither individually nor collectively have an adverse impact on the agricultural use and future viability and related Purposes of this Easement, may be constructed on the Property subject to the approval requirements of Section 4. Grantors may construct and maintain a well on the Property.

#### **G. Wildlife and Soil Protection**

Grantors are permitted to take necessary wildlife and soil protection measures to the extent they are required by the State of New Hampshire. Grantors shall also remove non-native or invasive species at the Property and cut select trees and vegetation to prevent soil erosion or crop damage.

#### **H. 50-Foot Buffer**

The parties acknowledge that there is a gravel pit on an abutting property and New Hampshire RSA 155-E:4-a prohibits excavation within 50 feet of the boundary line. Grantors agree to monitor the excavation on the abutting property and promptly notify Grantee if there is excavation within 50 feet of the boundary line. Grantor or Grantee or its designee shall have the right to take action to enforce the provisions of RSA 155-E:4-a, as it applies to the abutting property, to enforce the 50-foot buffer.

### **4. APPROVAL REQUIREMENTS**

This Easement identifies certain activities that require the prior written approval of Grantee, or its designee before Grantors can commence construction or engage in certain activities. As such, prior to the commencement of any such construction or activities, Grantors shall submit to Grantee or its designee a written plan, describing or showing, as appropriate, the nature and location of the proposed physical changes, improvements, or activities to or on the Property in conjunction therewith, copies of any necessary state or local permits or approvals, and the overall scope of the proposal in relation to the Purposes of this Easement. Within sixty (60) days after receipt by the Grantee or its designee of all such information and any supplemental information reasonably requested by Grantee or its designee, Grantee or its designee shall approve, approve with conditions or disapprove the plan, and shall so inform Grantors in writing. Approval shall not be unreasonably withheld, and any disapproval shall specify in detail objections of the Grantee or its designee and the reasons therefor.

## **5. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE**

A. Grantors agree to notify Grantee or its designee in writing at least sixty (60) days before the transfer of title to the Property or any interest therein and shall specify the nature of such transfer.

B. Grantee and its designee shall be under no obligation to maintain the Property or pay any taxes, assessments, or other expenses related to the Property.

C. Grantors agree to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Any mortgage or lien arising after the date of this Easement shall be subordinated to the terms of this Easement.

## **6. NOTICES**

All notices, requests and other communications, required to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested, or by prepaid overnight delivery service providing a signed receipt for delivery, to the appropriate address set forth above or at such other address as Grantors or Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

Notices, requests, and other communication shall be directed to the following:

### **Grantors:**

Kevin G. Bergeron, of 12 Pray Street, Rochester New Hampshire 03868

Linda C. Perry, of 3145 Raintree Road, York, Pennsylvania 17404

Carrie Lennon and Stacey Harrison (Executors of the Estate of Clarence R. Bergeron)

Theodore R. Bergeron, of 2 Phoebe Court, Keene, New Hampshire 03431

### **Grantee:**

Town of Surry Select Board

1 Village Road

Surry, NH 03431

*With a copy to:*

Town of Surry Conservation Commission

1 Village Road

Surry, NH 03431



## **7. AFFIRMATIVE RIGHTS OF GRANTEE**

A. Grantee or its designee shall preserve and protect the conservation values of the Property.

B. Grantee or its designee shall have reasonable access to all portions of the Property for such inspection as is necessary to determine compliance with and to enforce this Easement, to exercise the rights conveyed hereby, and to fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement; however, Grantee or its designee shall have no obligation to provide for supervision or maintenance of the Property, including, without limitation, trails, bridges, railings, walkways or other improvements thereon, and Grantee or its designee shall have no liability resulting from such supervision or maintenance or the lack thereof. Grantee or its designee shall have no obligation to pay any taxes, assessments, fees, charges, or expenses in connection with the Property.

C. Grantee shall have the right to place signs on the Property boundaries for the purpose of identifying it as conservation easement land protected by Grantee. Grantee has the right to establish a kiosk naming the property in honor of Clarence and Grace Bergeron and to erect educational signs.

D. Grantee reserves the right to delegate to the Surry Conservation Commission the implementation, negotiation, and approval of actions, plans and agreements required by this Easement, including any stewardship plan, and supervision and monitoring of activities of Grantors under this Easement. Grantee may revoke the authority delegated to the Conservation Commission in this paragraph at any time by written notice to Grantors, provided that no such revocation shall annul or abrogate any previously approved action taken by the Conservation Commission prior to the delivery of such notice. Following any such revocation, the Surry Select Board shall assume and perform all obligations of Grantee.

E. As stated in Section 3.H above, the parties acknowledge that there is a gravel pit on an abutting property and New Hampshire RSA 155-E:4-a prohibits excavation within 50 feet of the boundary line. Grantors agree to monitor the excavation on the abutting property and promptly notify Grantee if there is excavation within 50 feet of the boundary line. Grantee reserves the right to take action to enforce the provisions of RSA 155-E:4-a, as it applies to the abutting property, to enforce the 50-foot buffer.

## **8. ENVIRONMENTAL WARRANTY**

Grantors warrant that they are in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantors warrant that it has not received or become aware of any notice or claims by any governmental authority of any violation or alleged violation of, noncompliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property. Grantors further warrant that they have no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.

Grantors shall hold harmless and indemnify Grantee and its designee against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with any prior or threatened release of any Hazardous Materials on, at, beneath, or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantors or any other prior owner of the Property. Grantors' indemnification obligation shall not be affected by any authorizations provided by Grantee to Grantors with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.

"Environmental Law" or "Environmental Laws" means any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution or substance that may pose a present or potential hazard to human health or the environment.

## **9. TERMINATION, EXTINGUISHMENT, AND CONDEMNATION**

### **A. Termination or Extinguishment.**

If circumstances arise in the future that render the Purposes of this Easement impossible to accomplish through the exercise of the parties' best reasonable efforts, this Easement can be terminated or extinguished, whether with respect to all or part of the Property, by judicial proceedings in a New Hampshire court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such judicial termination or extinguishment, shall be determined in accordance with Section 9.C below. In making this grant of Easement, Grantors have considered and acknowledge the possibility that uses prohibited by the terms of this Easement may become more economically viable than the uses specifically reserved by Grantors pursuant to this Easement. It is the intent of Grantors and Grantee that any such change in economic conditions shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this Section.

### **B. Condemnation**

If all or any part of the Property is taken, in whole or in part, by exercise of eminent domain or is acquired by purchase in lieu of condemnation, whether by public, corporate or other authority, so as to terminate this Easement, in whole or in part, Grantors and Grantee shall act jointly to recover the full value of their interests in the Property subject to the taking or in lieu purchase and to

recover all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantors and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee reserves the right to recover any deficiency in Grantee's proportional share of the proceeds, including the right to record a lien. The amount of the proceeds to which Grantee shall be entitled, after payment of any expenses, shall be determined in accordance with Section 9.C below.

### **C. Valuation**

The parties hereto stipulate that this Easement constitutes a real property interest immediately vested in Grantee, and that the fair market values of the Easement and the restricted fee interest in the Property shall be determined as follows:

- i. If Grantors claim a charitable contribution deduction, that value determined by
- ii. multiplying (1) the fair market value of the Property without deduction for the value of this Easement as of the time of said extinguishment or condemnation, by (2) the ratio of (A) the value of the Easement at the time of this grant to (B) the value of the Property at the time of this grant without deduction for the value of this Easement, those values being those used to calculate the deduction for federal income or estate tax purposes allowable by reason of this grant, pursuant to the IRS Code Section 170(h) or 2055(f), determined by an appraisal report which shall be prepared by a qualified appraiser. For the purposes of this Section, the ratio of the value of the Easement to the value of the Property unencumbered by this Easement shall remain constant. Any increase in value attributable to improvements made after the effective date of this Easement shall accrue to such of Grantors and Grantee or its designee that made the improvement(s).
- iii. If Grantors do not claim a deduction for federal income tax purposes allowable by reason of the grant of this Easement, in the event of an extinguishment, termination, or condemnation of this Easement pursuant to this Section, the aforementioned percentage interests of the parties in the fair market value of the Property shall be determined as of the date of said extinguishment, termination, or condemnation by an appraisal prepared by a qualified appraiser and obtained by Grantors at his expense, which shall be submitted to and approved by Grantee prior to division of the proceeds.

### **D. Application of Proceeds**

Grantee shall use its share of the proceeds resulting from condemnation or extinguishment in a manner consistent with and in furtherance of one or more of the Purposes set forth herein.

## **10. AMENDMENT**

If Grantors and Grantee or its designee agree that an amendment to or modification of this Easement would be appropriate and desirable to take account of unforeseen or changed circumstances, Grantors and Grantee or its designee may amend this Easement in accordance with the then current amendment policies of Grantee or its designee. This Easement may be amended

only if, in the sole and exclusive judgment of Grantee or its designee, such amendment is consistent with the Purposes of this Easement and complies with all applicable laws and regulations.

No amendment shall affect the qualification of this Easement or the status of Grantee under any applicable laws, including Section 170(h) or Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or NH RSA 477:45-47, nor shall any amendment affect the perpetual duration of this Easement. Any amendment shall be executed by Grantors and Grantee and shall be recorded in the Cheshire County Registry of Deeds.

## **11. BENEFITS AND BURDENS**

A. The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of protecting the Purposes of this Easement and has the resources to enforce the provisions of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

B. Grantors and Grantee, or its designee, by executing, accepting, and recording this Easement, agree to be bound by and to observe and enforce the provisions hereof, and assumes the rights and responsibilities herein granted to and incumbent upon Grantors and Grantee or its designee, all in the furtherance of the Purposes of this Easement.

## **12. ENTIRE AGREEMENT AND SEVERABILITY**

This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to this Easement. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, after a court hearing, or by confirmation of an arbitration award, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

## **13. ADDITIONAL EASEMENT**

Should Grantors determine that the expressed Purposes of this Easement could better be effectuated by the conveyance of an additional easement, Grantors may execute an additional instrument to that effect, provided that the Purposes of this Easement are not diminished thereby and that a public agency or qualified organization described in Section 11 accepts and records the additional easement.

#### **14. LIBERAL CONSTRUCTION**

Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed so as to effectuate the Purposes of this Easement and the policy and purposes of NH RSA 477:45-47. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the Purposes of this Easement that would render the provision valid and reasonable shall be favored over any interpretation that would render it invalid or unreasonable.

#### **15. HOLD HARMLESS**

Grantors agree to release, hold harmless, defend and indemnify Grantee and its designee from any and all liabilities including, but not limited to, injuries, losses, damages, judgments, costs, expenses and fees which Grantee and its designee may suffer or incur as a result of, arising out of, or connected with: 1) the activities of Grantors or any other person on the Property, other than those caused by negligent acts or acts of misconduct by Grantee or its designee; 2) violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement by any person, other than Grantee or its designee, in any way affecting, involving, or relating to the Property, except as may be provided for elsewhere in this Easement; or 3) damage to the Property caused by natural acts, such as floods, fires or diseases.

#### **16. RESOLUTION OF DISPUTES**

A. Grantors and Grantee or its designee desire and agree that disputes arising from time to time concerning the provisions of this Easement shall first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, Grantors and Grantee or its designee agree that if either party becomes concerned whether any use, action, or inaction complies with the provisions of this Easement, the concerned party shall notify the other party of the problem, and the parties shall attempt to reach an agreeable resolution by informal dialogue.

B. If informal dialogue does not resolve the dispute, either party may refer the dispute to mediation by written notice to the other. Within ten (10) days of the delivery of such a notice, the parties shall agree on a single impartial mediator. Mediation shall be conducted in Keene, New Hampshire, or such other location as the parties shall agree upon. Each party shall pay its own legal fees and other costs, and the costs of mediation shall be split equally between the parties.

C. If the parties agree to bypass mediation, or if they subsequently agree that mediation will not successfully resolve the dispute, the parties may agree to submit the dispute to binding arbitration in accordance with New Hampshire RSA 542. Within twenty (20) days of the agreement to arbitrate, the parties shall agree to one single arbitrator. If unable to agree on one single arbitrator, each party shall choose one arbitrator. The two arbitrators so chosen shall in turn choose a third arbitrator within twenty (20) days of the selection of the second arbitrator. The arbitrator or arbitrators, as the case may be, shall forthwith set as early a hearing date as is practicable. The arbitration hearing shall be conducted in Keene, New Hampshire, or such other location as the parties shall agree upon. A decision by the single arbitrator or by two of the three arbitrators, as the case may be, may include an award of legal fees and other costs and shall be binding upon the

parties. Either party may obtain judicial enforcement of the arbitration decision in a court of competent jurisdiction.

D. Notwithstanding the availability of mediation and arbitration to address disputes, if either party refuses mediation or arbitration, then either party may bring an action at law or in equity in any court of competent jurisdiction to address the dispute. Such action may include seeking a temporary or permanent injunction, recovering damages, legal fees and other costs, or obtaining other relief as appropriate.

E. Notwithstanding any of the foregoing, if Grantee or its designee believes at any time that any action or inaction of Grantors or a third party is causing or is threatening to cause irreparable damage to the Property in breach of the Easement, Grantee or its designee may pursue its remedies under Section 17 “Breach of Easement.”

## **17. BREACH OF EASEMENT**

A. If Grantee or its designee determines that a breach of this Easement has occurred or is threatened, Grantee or its designee shall notify Grantors in writing of such breach and the action that Grantee or its designee requires Grantors to take in response, which may include a demand to cure or prevent the breach and, where the breach involves damage to the Property, to restore the damaged Property at the Grantor’s cost.

B. Grantors shall, within thirty (30) days after receipt of such notice, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach and to repair any damage. Grantors shall promptly notify Grantee or its designee of its actions taken hereunder.

C. If Grantors fail to perform its obligations under Section 17.B, Grantee or its designee may undertake any actions that are reasonably necessary to repair any damage or to cure or prevent such breach, including an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by temporary or permanent injunction, and to restore the damaged Property.

D. Notwithstanding the availability of any and all other legal remedies, if Grantee or its designee determines that the Purposes of this Easement are in immediate danger of irreparable damage, Grantee or its designee may pursue any and all of its remedies under this Section, “Breach of Easement,” without prior notice to Grantors or without waiting for the period provided for cure to expire.

E. Grantee or its designee shall be entitled to recover damages from the party directly or primarily responsible for a breach of this Easement or damage to any conservation features protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental attributes of the Property. Without limiting Grantors’ liability therefor, Grantee or its designee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

F. Provided that Grantors are directly or primarily responsible for the breach, all reasonable costs incurred by Grantee or its designee in enforcing the terms of this Easement against Grantors, including, without limitation, staff and consultant costs, reasonable legal fees, and any costs of restoring the damaged Property, shall be borne by Grantors; and provided further, however, that if Grantors ultimately prevail in a judicial enforcement action, each party shall bear its legal fees and other costs.

G. Forbearance by Grantee or its designee in exercising its rights under this Section, "Breach of Easement," or recourse by Grantee or its designee to the remedies available under Section 16, "Resolution of Disputes," shall not be construed to be a waiver of Grantee's rights hereunder. No delay or omission by Grantee or its designee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver. Grantors hereby waive any defense of laches or estoppel.

H. Nothing contained in this Easement shall be construed to entitle Grantee or its designee to bring any action against Grantors for any damage to or change in the Property resulting from causes beyond Grantors' control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant damage to the Property resulting from such causes. Grantee and its designee and Grantors reserve the right, separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section, "Breach of Easement," against any third party responsible for any actions inconsistent with the provisions of this Easement.

#### **18. NO EXTINGUISHMENT THROUGH MERGER**

Grantors and Grantee explicitly agree that it is their express intent that the provisions of this Easement are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Property by or to Grantee or any successor or assign shall be deemed to eliminate the Easement, or any portion thereof, granted hereunder under the doctrine of merger or any other legal doctrine.

There are no rights of homestead involved in this conveyance.

Executed by Grantors as of the \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Kevin G. Bergeron

\_\_\_\_\_  
Linda C. Perry

\_\_\_\_\_  
Carrie Lennon,  
Executor of the Estate of Clarence R. Bergeron

\_\_\_\_\_  
Stacey Harrison,  
Executor of the Estate of Clarence R. Bergeron

\_\_\_\_\_  
Theodore R. Bergeron

STATE OF NEW HAMPSHIRE  
COUNTY OF CHESHIRE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2023 by Kevin G. Bergeron, Linda C. Perry, Carrie Lennon and Stacey Harrison, Co-Executors of  
the Estate of Clarence R. Bergeron, and Theodore R. Bergeron.

\_\_\_\_\_  
Notary Public/Justice of the Peace

My commission expires:



ACCEPTED: **The Town of Surry,**

**By and through the Surry Select Board**

By: \_\_\_\_\_  
John Croteau III

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Bruce Smith

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Stephen Goldsmith

\_\_\_\_\_  
Date

STATE OF NEW HAMPSHIRE  
COUNTY OF CHESHIRE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2023 by

\_\_\_\_\_, Surry  
Select Board, on behalf of the Town of Surry.

\_\_\_\_\_  
Notary Public/Justice of the Peace

My commission expires:

## **APPENDIX A**

### **Property Description**

#### Surry, New Hampshire (2 Tracts):

##### TRACT 1:

A certain parcel of land situated on the easterly side of Main Street in Surry Village, County of Cheshire and State of New Hampshire, as follows:

Beginning at a corner of fences in the east line of said Main Street and at land formerly of Maud C. Crain; thence running N 82° 20' East along lands of Maud C. and Donald Crain, 1348.83 feet to a corner; thence running S 7° 46' E 186.4 feet to a corner; thence S 89° 38' W 188 feet to a corner; thence running S 34° 34' E 232.6 feet to a corner; thence running S 26° 37' E 212 feet to a corner; thence running S 76° 14' W 258.1 feet to a corner; thence running S 59° 03' W 90 feet to a corner in a wire fence, and last six courses bounding on land of the United States of America; thence running westerly along a wire fence and along land formerly of Laura Loud, et al to a corner; thence running northerly along a wire fence to a corner of fences; thence running westerly along wire fence to a corner on the east side of Main Street, said last two courses bounding on land formerly of one Wright; thence running northerly of the east side of Main Street about 300 feet to the point of beginning. Containing 14.52 acres, more or less.

Together with such water rights as are connected with said premises, the same being 5/48 of the Surry Water Co. Subject, however, to the rights and easements granted by Orville E. Cain, Trustee under the will of William Martin to the Connecticut River Power Company of New Hampshire by deed dated March 3, 1927, recorded Vol. 433, Page 237 of the Cheshire Registry, which said rights and easements are as follows: The perpetual right and easement to construct, reconstruct, repair, maintain, cooperate and patrol for the transmission of high and low voltage electrical current and telephone use, lines of lowers or poles or both (which may be erected at different times) with wires and cables strung upon and from the same and all necessary foundations, anchors, guys, braces, fittings, equipment and appurtenances over, across and upon a strip of land two hundred and fifty (250) feet in width, situated in said Surry, the center line of which is described as follows: Beginning at an iron pin on the south line of land of Mason A. Carpenter; thence S 17° 37' E to an iron pin in line of land of George A. Hall which line is shown upon blue print filed with the Registry of Deeds, also the right and easement, from time to time, without further payment therefor to clear and keep cleared, said strip of trees and underbrush and structures, the first clearing may be for less than full width and may be widened from time to time to the full width, and to remove, renew, replace, add to and otherwise change the lines and each and every part thereof, and the location thereof within said strip and to pass along said strip to and from adjoining lands and to pass over the above described lands to and from said strip as reasonably required. It is agreed that the line shall remain the property of the Connecticut River Power Co. of New Hampshire and that they shall pay all taxes assessed thereon.

TRACT II:

A certain tract of land situated in Surry, County of Cheshire and State of New Hampshire, and bounded and described as follows:

Beginning at an iron pin at the southeast corner of other land now or formerly of Pitfield, being the southwest corner of the premises herein conveyed; thence N 8° W 118.1 feet to an iron pin at land now or formerly of Fosher; thence N 82° 15' E 81 feet along said Fosher land to land now or formerly of Starkey; thence N 82° 15' E 906 feet along said Starkey land to land now or formerly of the United States Government; thence S 8° 50' E 108 feet along said United States Government land to land now or formerly of Bergeron; thence S 82° 20' W 987 feet along said Bergeron land to the iron pin at point of beginning.

The above-described two tracts are the same premises conveyed by deed of Kevin G. Bergeron to Kevin G. Bergeron, Linda C. Perry, Clarence R. Bergeron, and Theodore R. Bergeron, dated October 24, 2019 and recorded at Book 3085, Page 1127 of the Cheshire County Registry of Deeds. Clarence R. Bergeron died \_\_\_\_\_. See Cheshire County Probate Docket No. \_\_\_\_\_.